P. SUPPIAH v. THE LAW SOCIETY OF SINGAPORE

[C.A. (Lai Kew Chai, Thean & Chua JJ.) November 8, 1985]

[Singapore – Civil Appeal No. 31 of 1984]

Legal Profession – Advocate and solicitor – Complaint against solicitor's conduct in his professional capacity – Solicitors' Accounts Rules 1967, r. 6 – Legal Profession Act (Cap. 217), ss. 84(2) (h) & (j), 86(1), 96(1) (a) & 96(4) (b).

Legal Profession – Scope of Legal Profession (Cap. 217), s. 86(1).

On December 22, 1983, the appellant who is an advocate and solicitor, wrote to The Law Society of Singapore making certain allegations touching on the conduct of another advocate and solicitor, Mr. Cashin. He alleged principally that Mr. Cashin – (a) made untrue statements in his affidavit and (b) committed a breach of Rule 6 of the Solicitors' Accounts Rules, 1967 in that a cheque for the sum of $20,000 made out payable to him personally was credited to the clients' account of his firm of Murphy & Dunbar.

The Law Society in their reply dated February 28, 1984 dismissed the complaint. The appellant then applied to court for: (i) a declaration that the Law Society be directed to refer his said letter of December 22, 1983 to the Inquiry Committee under section 86(1) of the Legal Profession Act (Cap. 217) (the Act), and (ii) further or in the alternative, in the event that the Council of the Law Society (the Council) determined under section 96(1) (a) of the Act that a formal investigation was not necessary, the Law Society be ordered to apply for the appointment of a Disciplinary Committee under section 96(4) (b) of the Act. The learned Chief Justice dismissed the said application on the ground that there was no complaint against Mr. Cashin in relation to his conduct in a professional capacity. The appellant appealed.

Held, allowing the appeal: (1) the Council must on receipt of an application or a complaint consider whether it comes within section 86(1) of the Act. However, the Council should not consider further whether the application or complaint discloses a *prima facie* case against the advocate and solicitor concerned;

(2) the first allegation does not touch upon Mr. Cashin's conduct in his professional capacity. However, if an advocate knowingly deposes to an untrue statement in an affidavit, such conduct may well fall within paragraph (h) of section 84(2) of the Act. The second allegation, namely, a breach of Rule 6 of the Solicitors' Accounts Rules, 1967 does pertain to Mr. Cashin's conduct in his professional capacity and is also matter falling within paragraph (j) of section 84(2). Having regard to the allegations the Council should have referred the appellant's letter to the Inquiry Committee.

Case referred to:

(1) *Hilborne* v. *Law Society of Singapore* [1978] 1 M.L.J. 229.

COURT OF APPEAL.

A.S.K. Wee for the appellant.
Chelva Rajah for the respondent.

Cur. Adv. Vult.

Thean J. (delivering the Judgment of the Court): On December 22, 1983, the appellant, who is an advocate and solicitor, wrote to The Law Society of Singapore ("Law Society") making certain allegations touching on the conduct of another advocate and solicitor, Mr. Cashin, and enclosing copies of affidavits sworn by Mr. Cashin in an action in which he was sued as a defendant, copies of three cheques respectively and other documents referred to in the letter. The appellant alleged principally that Mr. Cashin –

(a) made untrue statements in his affidavits and

(b) committed a breach of Rule 6 of the Solicitors' Accounts Rules, 1967 in that a cheque for the sum of $20,000 made out payable to him personally was credited to the clients' account of his firm, Murphy & Dunbar.

On January 31, 1984, the Executive Secretary of the Law Society replied to the appellant stating that his letter was considered by the Council of the Law Society ("the Council") and that the contents of his letter did not disclose "a *prima facie* case of professional misconduct" on the part of Mr. Cashin. The decision of the Council was not acceptable to the appellant who then through his solicitor, Mr. A.S.K. Wee, wrote to the Law Society requesting the Council to reconsider its decision. Mr. Wee's letter the Executive Secretary on February 28, 1984 replied as follows:

> "Your letter of the 9th instant was considered by the Council at its recent meeting and I am directed to inform you that section 86(1) of the Legal Profession Act empowers the Council to refer the complaint to the Inquiry Committee *only if it touches on the conduct of an advocate and solicitor in his professional capacity.*
>
> The Council further decided that it will not give its reasons for dismissing the complaint as it is not obliged to do so."

Not content with this response, the appellant took out an originating summons against the Law Society seeking: (i) a declaration that the Law Society be directed to refer his letter of December 22, 1983 ("the appellant's letter") to the Inquiry Committee under section 86(1) of the Legal Profession Act ("the Act"), and (ii) further or in the alternative, in the event that the Council deter-

mined under section 96(1) (a) of the Act that a formal investigation was not necessary, the Law Society be ordered to apply for the appointment of a Disciplinary Committee under section 96(4) (b) of the Act. The application was heard by the learned Chief Justice who dismissed it on the ground that, on the facts alleged by the appellant, there was no complaint against Mr. Cashin in relation to his conduct in a professional capacity. Against that decision this appeal was brought, and at the conclusion of the hearing of the appeal, we allowed the appeal, set aside the judgment of the learned Chief Justice and made an order in terms of the declaration asked for in the originating summons.

Two questions arose in the appeal: the first was purely one of construction of section 86(1) of the Act, and the second was whether the Council ought to have referred the appellant's letter to the Inquiry Committee. Section 86(1) of the Act provides as follows:

"86.-(1) Any application by any person that an advocate and solicitor be dealt with under this Part and any complaint of the conduct of an advocate and solicitor in his professional capacity shall in the first place be made to the Society and the Council shall refer the application or complaint to the Inquiry Committee."

Mr. Wee on behalf of the appellant submitted that section 86(1) upon its true construction has two limbs: the first limb is an application by any person that an advocate and solicitor be dealt with under Part VII of the Act, and the second limb is a complaint of the conduct of an advocate and solicitor in his professional capacity. In other words, the conjunction "and" which joins these two limbs is to be read disjunctively as "or". Mr. Wee further submitted that the Council on receipt of the appellant's letter was obliged under section 86(1) to refer it to the Inquiry Committee, because the sub-section says that the Council "shall refer the application or complaint to the Inquiry Committee". It is not the concern, nor is it within the power, of the Council to decide whether a *prima facie* case touching on the conduct of Mr. Cashin in his professional capacity has been disclosed. Mr. Chelva Rajah on behalf of the respondent conceded that section 86(1) has two limbs, but contended that the Council is entitled to consider, as it did, whether a *prima facie* case has been disclosed before it refers the application or complaint to the Inquiry Committee.

We agree with the view that section 86(1) has two limbs, namely: (i) an application that an advocate and solicitor be dealt with under Part VII of the Act and (ii) a complaint of the conduct of an advocate and solicitor in his professional capacity. Subsequent provisions of the Act, such as sections 86(3), 86(4), 87(1)(c), 87(2), 87(5)(a) (i), 88(2), 96(1), 96(2) and 97(1) support such a construction: in all these provisions the expression, "application or complaint", has consistently appeared. For an application to come within the first limb it must be one in respect of a matter falling within one of the paragraphs (a) to (k) of section 84(2), in respect of which an advocate and solicitor can be dealt with under Part VII of the Act; and a complaint to fall within the second limb must be one touching upon the conduct of an advocate and solicitor in his professional capacity. The two limbs, however, are not mutually exclusive; they overlap each other. An application for an advocate and solicitor to be dealt with under Part VII of the Act may involve:

(a) a complaint of the conduct of an advocate and solicitor in his professional capacity, or

(b) a complaint of the conduct of an advocate and solicitor other than in his professional capacity.

Conversely, a complaint touching on the conduct of an advocate and solicitor in his professional capacity may fall within or without one of the paragraphs of section 84(2) of the Act. As an illustration, a case of professional misconduct which does not fit into any of those paragraphs is *Hilborne* v. *Law Society of Singapore*.[1]

Where a person makes an application or a complaint which falls within the meaning of section 86(1) of the Act, it is mandatory on the part of the Council to refer it to the Inquiry Committee. On the other hand, where an application or a complaint does not fall within that subsection, the Council has no such obligation and, indeed, will be obliged to reject it. From this, it follows that the Council must on receipt of an application or a complaint consider whether it comes within section 86(1). However, the Council should not consider further whether the application or complaint discloses a *prima facie* case against the advocate and solicitor concerned.

We now turn to the matters alleged in the appellant's letter. Mr. Wee argued that this letter was not a complaint but an application. Such an argument is one on semantics and has no merit. At any rate it is contrary to what the appellant said in paragraph 3 of his letter: he said that there were "certain facts relating to" the three cheques

which constituted his "complaint" against Mr. Cashin. It is not clear whether the appellant intended his letter to be an application for Mr. Cashin to be dealt with under Part VII of the Act or a complaint of Mr. Cashin's conduct in his professional capacity. It seems to us that he intended it to be both. Be that as it may, his letter contained two principal allegations against Mr. Cashin: that he made untrue statements in his affidavits and that he credited to the clients' account of his firm, Murphy & Dunbar, money which belonged to him personally in contravention of the provisions of Rule 6 of the Solicitors' Accounts Rules, 1967. The first allegation does not touch upon Mr. Cashin's conduct in his professional capacity. However, if an advocate knowingly deposes to an untrue statement in an affidavit, such conduct may well fall within paragraph (h) of section 84(2) of the Act. The second allegation, namely, a breach of Rule 6 of the Solicitors' Accounts Rules, 1967 does pertain to Mr. Cashin's conduct in his professional capacity and is also a matter falling within paragraph (j) of section 84(2). Having regard to these allegations the Council should have referred the appellant's letter to the Inquiry Committee, and we so held.

Order accordingly.

Solicitors: *A.S.K. Wee; Tan, Rajah & Cheah.*

MOHAMED FAMI HASSAN v. SWISSCO PTE LTD. & GOVERNMENT OF THE REPUBLIC OF IRAQI (IRAQI STATE ENTERPRISE FOR MARITIME TRANSPORT) – THIRD PARTY

[O.C.J. (Sinnathuray J.) June 19, 1985]

[Singapore – Suit No. 2517 of 1981]

Tort – Negligence – Liability – Plaintiff seriously injured on board vessel – Loading oil drums – Use of can hooks – Whether safe system of work – Duty of employers.

Employment – Worker injured in course of employment – Employers' duty of care.

Damages – Quadriplegic – Quantum – Interest whether payable.

In this case, it is not disputed that during the course of loading three oil drums from "Sea Supply" (owned by the defendants) onto a larger vessel "14 Ramadhan", one drum fell and the plaintiff was very seriously injured. Can hooks were used for the loading. The plaintiff became a quadriplegic and was completely dependent on others for all his personal needs. The main issue was whether the defendants had provided a safe system of work.

Held: (1) it is not a safe system of work to use can hooks to load oil drums outside quiet waters. Net sling should have been used. It is the duty of the defendants as employers to take all reasonable steps to ensure the safety of their employees. The defendants should have foreseen that there was a likelihood of mishandling and therefore there was the danger that a drum or drums may fall. The defendants are therefore wholly to blame. Judgment was given for the plaintiff on liability;

(2) damages were awarded under the following heads:

(a) General damages, *i.e.*, for pain and suffering, and loss of amenities: $180,000;

(b) Loss of expectation of life: $6,500;

(c) Costs for future nursing care: $122,400;

(d) Loss of future earnings: $25,200;

(e) Actual loss of earnings: $19,440;

(f) Special damages: $6,973 (agreed);

(3) judgment for $360,513 and costs was entered for the plaintiff;

(4) no order for interest was made.

Case referred to:

(1) *Soh Kheng Seng* v. *Leong Chee Hoong & Anor.* [1980] 2 M.L.J. xcix.

CIVIL SUIT.

Mohamed bin Abdullah for the plaintiff.
Anne Loke (Miss) for the defendant.
Third Party absent.

Cur. Adv. Vult.

Sinnathuray J. : In this action, the plaintiff's claim is for damages for personal injuries and for consequential loss suffered by him as a result of an accident which occurred on May 27, 1979 in the course of his employment by the defendants on board a motor launch "Sea Supply". It is not in dispute that during the course of loading three oil drums from "Sea Supply" onto a larger vessel "14 Ramadhan" one drum fell and the plaintiff was injured.

At the material time "Sea Supply" and "14 Ramadhan" were somewhere near the Eastern Anchorage, about two miles away from the last of the vessels anchored at this Anchorage. On this evidence the vessels were somewhere close to international waters. Captain Hong who gave evidence for the defendants as an expert witness when asked on this topic said that the vessels were outside Port Limits and were in waters used by foreign